

(Adopted June 6, 2008)

(PAR 314 — November 12, 2008)

PROPOSED AMENDED RULE 314. FEES FOR ARCHITECTURAL COATINGS

(a) Purpose

The purpose of this rule is to recover the District's cost of implementing the architectural coatings program and programs related to architectural coatings, and the revenues shall only be used for such purposes. California Health and Safety Code Section 40522.5 provides authority for the District to adopt a fee schedule on areawide or indirect sources of emissions which are regulated, but for which permits are not issued by the District, to recover the costs of programs related to these sources.

(b) Applicability

This rule applies to architectural coatings manufacturers and big box retailers that distribute or sell ~~their manufactured~~ architectural coatings into or within the District for use in the District and are subject to Rule 1113 - Architectural Coatings. This includes products sold through big box retailers with distribution centers located within or outside the District. This rule does not apply to architectural coatings sold in this District for shipment and application outside of this District or to aerosol coating products.

(c) Definitions

For the purpose of this rule, the following definitions shall apply:

- (1) AEROSOL COATING PRODUCT means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground marking and traffic marking applications.
- (2) ANNUAL QUANTITY AND EMISSIONS REPORT includes the quantity of each architectural coating distributed or sold into or within the District for use in the District during each calendar year, reported as gallons and their associated VOC content, as supplied, reported in grams per liter, for each product in all container sizes.
- (3) APPURTENANCES are accessories to a stationary structure, including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air

conditioning equipment, other mechanical equipment, large fixed stationary tools, signs, motion picture and television production sets, and concrete forms.

- (4) ARCHITECTURAL COATINGS are any coatings applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.
- (5) ARCHITECTURAL COATINGS MANUFACTURER is any company or person that imports, manufactures, produces, packages, or repackages architectural coatings for sale or distribution for use in the District.

~~(6)~~ BIG BOX RETAILER is a physically large-chain retail outlet store with a footprint greater than 20,000 square feet and classified under Standard Industrial Classification code Industry Group 5211: Lumber and Other Building Materials Dealers, as listed by the U.S. Department of Labor.

~~(6)(7)~~ COATING is a material which is applied to a surface in order to beautify, protect, or provide a barrier to such surface.

~~(7)(8)~~ EXEMPT COMPOUNDS are as defined in Rule 102 - Definition of Terms.

~~(8)(9)~~ FORMULATION DATA is the actual product recipe which itemizes all the ingredients contained in a product including VOCs and the quantities thereof used by the manufacturer to create the product. Material Safety Data Sheets (MSDS) are not considered formulation data.

~~(9)(10)~~ GRAMS OF VOC PER LITER OF COATING, LESS WATER AND LESS EXEMPT COMPOUNDS, is the weight of VOC per combined volume of VOC and coating solids and can be calculated by the following equation:

$$\begin{array}{l} \text{Grams of VOC per Liter of Coating, Less} \\ \text{Water and Less Exempt Compounds} \end{array} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

Where:

W_s	=	weight of volatile compounds in grams
W_w	=	weight of water in grams
W_{es}	=	weight of exempt compounds in grams
V_m	=	volume of material in liters
V_w	=	volume of water in liters
V_{es}	=	volume of exempt compounds in liters

For coatings that contain reactive diluents, the Grams of VOC per Liter of Coating, Less Water and Less Exempt Compounds, shall be calculated by the following equation:

$$\begin{array}{l} \text{Grams of VOC per Liter of Coating, Less} \\ \text{Water and Less Exempt Compounds} \end{array} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

Where:

W_s	=	weight of volatile compounds emitted during curing, in grams
W_w	=	weight of water emitted during curing, in grams
W_{es}	=	weight of exempt compounds emitted during curing, in grams
V_m	=	volume of the material prior to reaction, in liters
V_w	=	volume of water emitted during curing, in liters
V_{es}	=	volume of exempt compounds emitted during curing, in liters

~~(10)~~(11) GRAMS OF VOC PER LITER OF MATERIAL is the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where:

W_s	=	weight of volatile compounds in grams
W_w	=	weight of water in grams
W_{es}	=	weight of exempt compounds in grams
V_m	=	volume of the material in liters

~~(11)~~(12) PRODUCT is an architectural coating which is identified by means of a unique product code and product name or product line (if applicable), as written on the container label and that is subject to one of the coating category VOC limits specified in Rule 1113 paragraphs (c)(1) or (c)(2) Table of Standards.

~~(12)~~(13) PRODUCT LINE is a group of coatings that:

- (A) Belong to the same coating category in Rule 1113 Table of Standards,
- (B) Have the same vehicle technology (solvent or water),
- (C) Are of the same resin type,
- (D) Are recommended for the same use (either interior, exterior or dual use),
- (E) Have the same form (either single - or multiple - component form),
- (F) Do not exceed a coating (regulatory) VOC range of 25 grams per liter between the highest and lowest coating in the group, and
- (G) If included in the Averaging Compliance Option Program, meet subparagraphs (A) to (G) of this definition and have all grouped products either above a limit or below a limit.

~~(13)~~(14) RESPONSIBLE PARTY for a corporation is a corporate officer or an authorized representative so delegated by a corporate officer. Delegation of an authorized representative must be made in writing to the Executive Officer. A

responsible party for a partnership or sole proprietorship is the general partner or proprietor, respectively.

~~(14)~~(15) VOLATILE ORGANIC COMPOUND (VOC) is as defined in Rule 1113 – Architectural Coatings.

(d) Requirement to Obtain a Manufacturer Identification (ID) Number

(1) An architectural coatings manufacturer subject to this rule at any time during the calendar year 2008 shall apply to the District for a manufacturer ID number on or before December 31, 2008. An architectural coatings manufacturer that becomes subject to this rule in any year subsequent to calendar year 2008 shall apply to the District for a manufacturer ID number on or before December 31 of that year.

(2) Change or Acquisition of an Architectural Coatings Manufacturer

(A) When there is a change or acquisition of an architectural coatings manufacturer with a District issued manufacturer ID number, the successor architectural coatings manufacturer shall apply for a manufacturer ID number on or before December 31 of the calendar year of the change or acquisition, unless the successor architectural coatings manufacturer already has a District issued manufacturer ID number. The successor manufacturer shall include the previous architectural coatings manufacturer ID number in their Annual Quantity and Emissions Report for the first year after the change or acquisition.

(B) Acquisition of an architectural coatings manufacturer shall not be considered a change in ownership if the architectural coatings manufacturer who is acquired continues to file Annual Quantity and Emissions Reports and pay fees under its District issued ID number.

(e) Requirement to Submit an Annual Quantity and Emissions Report

(1) For each calendar year (January 1 through December 31) beginning with 2008 and continuing with each subsequent calendar year, an architectural coatings manufacturer shall, in a format determined by the Executive Officer, submit to the District by April 1 of the following calendar year (the official reporting due date) an Annual Quantity and Emissions Report signed by a responsible party certifying that all information submitted (including electronic submittal) is true and correct. The Annual Quantity and Emissions Report shall include, but not be limited to, the following:

- (A) Manufacturer information including the manufacturer ID number issued by the District;
 - (B) Each architectural coating product code and product name or product line (if applicable);
 - (C) Whether the coatings are waterborne or solventborne;
 - (D) Whether the coatings are for interior, exterior, or dual use;
 - (E) The applicable coating category listed in the Table of Standards in Rule 1113 – Architectural Coatings;
 - (F) The grams of VOC per liter of coating, less water and less exempt compounds for each product as supplied for use by the manufacturer;
 - (G) The grams of VOC per liter of material for each product as supplied or for multi-component coatings as recommended for use by the manufacturer. Additionally, for solvent-based coatings, grams of VOC per liter of material with maximum thinning allowed with a VOC, as listed in the Technical Data Sheet, shall also be included.
 - (H) Total annual quantity of each product distributed or sold into or within the District for use in the District, as supplied, and reported in gallons for all container sizes. The annual quantity of each product shall include products sold through big box retailers with distribution centers located within or outside the District. The Executive Officer shall maintain a list of big box retailers within the meaning of this rule, and shall make the list available upon request. Architectural coatings manufacturers shall use the list of big box retailers for purposes of reporting quantities of products distributed or sold in the District through big box retailers; and
 - (I) For any product with VOC content higher than the applicable limit in Rule 1113, an indication whether the product has been sold under any of the following provisions of Rule 1113 – Architectural Coatings:
 - (i) Sell-through provisions
 - (ii) Averaging Compliance Option
 - (iii) Small container exemption
 - (iv) Other (with explanation).
- (2) An architectural coatings manufacturer that acquires another architectural coatings manufacturer shall provide the information specified in subparagraph (e)(1)(A) through (e)(1)(I) for the acquired architectural coatings manufacturer for the entire calendar year.

(3) By January 30, 2009, and every year thereafter, a big box retailer shall report to the architectural coatings manufacturer of that product the total annual quantity of each coating product distributed or sold for use in the District through its distribution centers located outside the District for the previous calendar year (January 1 through December 31), as supplied, in a format determined by the Executive Officer. The report submitted to each architectural coatings manufacturer shall be signed by a responsible party certifying that all information reported is true and correct.

(f) Recordkeeping

Architectural Coatings Manufacturers shall:

- (1) Maintain a copy of the signed application form submitted to the District to obtain the manufacturers ID number, and the written response from the District issuing a manufacturer ID number. The copies shall be maintained for five (5) years beyond the date on each document, and made available upon request by the Executive Officer.
- (2) Maintain records to verify data used to prepare the Annual Quantity and Emissions Report from architectural coatings distributed or sold into or within the District for use in the District and compliance with applicable rules and regulations. The records shall be maintained for five (5) years and made available upon request by the Executive Officer. Such records shall include but not be limited to:
 - (A) Product formulation records (including both grams of VOC per liter of coating and grams of VOC per liter of material):
 - (i) Laboratory reports [including percent weight of non-volatiles, water, and exempts (if applicable); density of the coating; and raw laboratory data] of test methods conducted as specified in paragraph (m)(1) or
 - (ii) Product formulation data or physical properties analyses, as applicable, with a VOC calculation demonstration; and
 - (B) Production records including, if applicable, batch tickets with the date of manufacture, batch weight and volume; and
 - (C) Distribution records:
 - (i) Customer lists or store distribution lists or both (as applicable) and
 - (ii) Shipping manifests or bills of lading or both (as applicable); and

- (D) Sales records consisting of point of sale receipts or invoices to distributors or both, as applicable.

(g) Fees

(1) Manufacturer ID Number Fee

An architectural coatings manufacturer applying for a manufacturer ID number with the District as specified in paragraphs (d)(1) and (d)(2) shall pay a non-refundable application fee of \$168.62 at the time of submitting the application.

(2) Annual Quantity and Emissions Fees

- (A) An architectural coatings manufacturer shall begin paying fees at the rates specified below, on or before April 1, 2009 and each subsequent April 1 (the official due date). Fees are based on the annual quantity and emissions of architectural coatings distributed or sold into or within the District for use in the District for the previous calendar year.

Phased-in Fee Rate

- (i) April 1, 2009 pay an annual quantity fee of \$0.018 per gallon of paint and an annual emission fee of \$123 per ton of VOC emissions.
- (ii) April 1, 2010 pay an annual quantity fee of \$0.027 per gallon of paint and an annual emission fee of \$185 per ton of VOC emissions.
- (iii) April 1, 2011 and each subsequent April 1, pay an annual quantity fee of \$0.036 per gallon of paint and an annual emission fee of \$246 per ton of VOC emissions.

- (B) If an architectural coatings manufacturer submits the Annual Quantity and Emissions Report in such a manner that District staff has to manually enter the data into the District database, then the architectural coatings manufacturer shall pay at the time of submittal a non-refundable fee of \$276.20 for the first two hours of District time. The architectural coatings manufacturer shall be assessed additional fees at the rate of \$138.12 per hour for any additional time beyond the first two hours.

- (h) Request to Amend the Annual Quantity and Emissions Report and Refund Request of Emission Fees

- (1) An architectural coatings manufacturer shall submit a written request (referred to as an “Amendment Request”) for any proposed revisions to previously submitted Annual Quantity and Emissions Reports. Amendment requests submitted after one (1) year from the official due date of the subject Annual Quantity and Emissions Report shall include a non-refundable standard evaluation fee of \$276.20. In addition, evaluation time beyond two hours shall be assessed at the rate of \$138.12 per hour not to exceed 10 hours. Amendment requests received within one year (1) from the official due date of a previously submitted Annual Quantity and Emissions Report shall not incur any such evaluation fees. The Amendment Request shall include all supporting documentation and revised applicable reports.
 - (2) An architectural coatings manufacturer shall submit a written request (referred to as a “Refund Request”) to correct the previously submitted Annual Quantity and Emissions Report and request a refund of overpaid fees. Refund Requests must be submitted within one (1) year from the official due date of the subject Annual Quantity and Emissions Report to be considered valid. The Refund Request shall include a revised Annual Quantity and Emissions Report and all applicable supporting documentation. If the Refund Request submitted results in a refund, then the architectural coatings manufacturer shall incur no evaluation fee. If the refund request results in no refund, then the architectural coatings manufacturer shall pay the standard evaluation fee and the hourly evaluation fees, as appropriate, specified in paragraph (h)(1).
- (i) Fee Payments and Late Surcharge
- (1) Fee payments are the responsibility of the architectural coatings manufacturer.
 - (2) If both the fee payments and the Annual Quantity and Emissions Report for the previous calendar year are not received by May 30, they shall be considered late; and a surcharge for late payment shall be imposed for fees past due as set forth in paragraph (i)(3). Architectural coatings manufacturers subject to paragraph (d)(2) on or after July 1 of the reporting year shall have an additional 6 months, or any additional time approved by the Executive Officer, to submit the fee payments and the Annual Quantity and Emissions Report for the acquired architectural coatings manufacturer. For the purpose of this paragraph, the fee payments and the Annual Quantity and Emissions Report shall be considered to be timely received by the District if it is postmarked on or before May 30. If May 30 falls on a Saturday, Sunday, or a state holiday, the fee payments and Annual Quantity and Emissions Report may be postmarked on the next business day following the Saturday,

Sunday, or the state holiday with the same effect as if they had been postmarked on May 30.

- (3) If fee payments for the Annual Quantity and Emissions Report (including any unreported quantity and emissions) are not received within the time prescribed by paragraph (i)(2), a late payment surcharge shall be assessed on the fees past due and added to the fee rate in paragraph (g)(2)(A), according to the following schedule:

Less than 30 days	5% of past due amount
30 to 90 days	15% of past due amount
91 days to one year	25% of past due amount
More than one year	50% of past due amount

- (4) Fee Payment Subject to Validation

Acceptance of a fee payment does not constitute validation of the emission data.

- (j) Service Charge for Returned Checks

Any person who submits a check to the District on insufficient funds or on instructions to stop payment, absent an overcharge or other legal entitlement to withhold payment, shall be subject to a \$25.00 service charge.

- (k) Confidentiality of Information

Subject to the provisions of the California Public Records Act (Govt. Code § 6250-6276.48) information submitted to the Executive Officer may be designated as confidential. The designation must be clearly indicated on the reporting form, identifying exactly which information is deemed confidential. District guidelines require a detailed and complete basis for such claim in the event of a public records request.

- (l) Violation

It shall be a violation of this rule for any architectural coatings manufacturer to distribute or sell their manufactured architectural coatings into or within the District for use in the District, without having a manufacturer ID number issued by the District, within the time specified in subdivision (d).

- (m) Test Methods

For the purpose of this rule, test methods are as specified in Rule 1113.

(n) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances. In the event any of the exceptions to this rule are held by judicial order to be invalid, the persons or circumstances covered by the exception shall instead be required to comply with the remainder of this rule.

(o) Distributor(s) List

On or before January 1, 2009, and each subsequent January 1, all architectural coatings manufacturers subject to this rule shall provide to the District a list of all U.S. distributors to whom they supply architectural coatings, including but not limited to private label coatings and toll manufactured coatings. The list shall be in a format determined by the Executive Officer and shall include the distributors name, address, contact person and phone number.

(p) Exemption

(1) Notwithstanding the provisions of subparagraph (g)(2), fees shall not be assessed on coatings with 5 or less grams of VOC per liter of material.

(2) Fees shall not be assessed on the volume of post-consumer coatings used in recycled coatings distributed or sold into or within the District for use in the District by a certified recycled paint manufacturer, provided that the post-consumer coatings is collected within the District and not include post-consumer coatings that are imported into the District. The amount of post-consumer coating per gallon of recycled coating shall be 10 percent by weight unless the certified recycled paint manufacturer demonstrates by records maintained and made available to the Executive Officer upon request, a higher percentage of post-consumer coatings are used in the recycled coatings. Definitions of Post-Consumer Coatings and Recycled Coatings are as defined in Rule 1113 and certified recycled paint manufacturer shall be as certified pursuant to Rule 1113.